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Federal Communications Commission

DA 04-3011

FCC MAIL SECTION

SEP 24 1 30 PM '04

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Crystal Falls, Michigan)

(Laona, Wisconsin)

MB Docket No. 04-370
RM-11081

MB Docket No. 04-371
RM-11082

NOTICE OF PROPOSED RULE MAKING

Adopted: September 22, 2004

Released: September 24, 2004

Comment Date: November 15, 2004

Reply Date: November 30, 2004

By the Assistant Chief, Audio Division:

1. Before the Commission for consideration is a *Notice of Proposed Rule Making* setting forth two proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. With respect to each proposal, the petitioner has stated that it will apply for the requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 04-370; RM-11081

Petitioner: Results Broadcasting of Iron Mountain, Inc.

John F. Garziglia
Mark Blacknell
Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, N.W. – Seventh Floor
Washington, D.C. 20005

Proposal: Allot Channel 280C2 at Crystal Falls, Michigan, as the community's third local FM allotment.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Crystal Falls, Michigan	235A, 264C1	235A, 264C1, 280C2

Coordinates: 45-57-22 NL and 88-33-46 WL

Additional Information: The proposed allotment of Channel 280C2 at Crystal Falls requires a site restriction of 24.3 km (15.1 miles) southwest of Crystal Falls at the coordinates indicated above. Concurrence in the allotment by the Government of Canada is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Petitioner states that Crystal Falls is an incorporated community with a population of 1,791 persons.

FCC Contact: Deborah A. Dupont (202) 418-7072

B. MB Docket No. 04-371; RM-11082

Petitioner: Results Broadcasting of Iron Mountain, Inc.

John F. Garziglia
Mark Blacknell
Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, N.W. – Seventh Floor
Washington, D.C. 20005

Proposal: Allot Channel 272C3 at Laona, Wisconsin, as the community's first local FM allotment.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Laona, Wisconsin	---	272C3

Coordinates: 45-39-30 NL and 88-43-20 WL

Additional Information: Channel 272C3 can be allotted to Laona with a site restriction of 11.1 km (6.9 miles) north of Laona at the reference coordinates indicated above. Concurrence in the allotment by the Government of Canada is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border.

Laona is an incorporated town with a population of 1,367 persons. The proposed allocation site will provide service to an area of 4,803 square kilometers containing a 2000 census population of 16,658 persons.

FCC Contact: Deborah A. Dupont (202) 418-7072

2. Comments, reply comments, counterproposals and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

3. Interested parties may file comments on or before November 15, 2004, and reply comments

on or before November 30, 2004, and are advised to read the Appendix for the proper procedures. Additionally, a copy of any filing should be served on the petitioner.

4. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹ This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* Section 3506(c)(4).²

5. For further information concerning this proceeding, contact Deborah A. Dupont, the designated FCC contact, at the telephone number indicated above. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

¹ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

² 44 U.S.C. § 3506(c)(4).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.